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Luther Martin, *Maryland Journal* (March 21,  
1788).

CXCII. LUTHER MARTIN'S REPLY TO THE LANDHOLDER.<sup>1</sup>

Baltimore, March 19, 1788.

In the recognition which the Landholder professes to make 'of what occurred to my advantage,' he equally deals in the arts of misrepresentation, as while he was 'only the record of the bad,' and I am equally obliged from a regard to truth to disclaim his pretended approbation as his avowed censure. He declares that I originated the clause which enacts that 'this Constitution and the laws of the United States, which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in every state shall be bound thereby, any thing in the Constitution or the laws of any state to the contrary notwithstanding.' To place this matter in a proper point of view, it will be necessary to state, that as the propositions were reported by the committee of the whole house, a power was given to the general government to negative the laws passed by the state legislatures, a power which I considered as totally inadmissible; in substitution of this I proposed the following clause, which you will find very materially different from the clause adopted by the Constitution, 'that the legislative acts of the United States, made by virtue and in pursuance of the articles of the union, and all treaties made and ratified under the authority of the United States, shall be the supreme law of the respective states, so far as those acts or treaties shall relate to the said states or their citizens, and that the judiciaries of the several states shall be bound thereby in their decisions, any thing in the respective laws of the individual

<sup>1</sup> P. L. Ford, *Essays on the Constitution*, 360-371; first printed in the *Maryland Journal*, March 21, 1788. For the origin of this controversy see above CLVII, CLXII, CLXXV, CLXXXIX-CXCI, see also CXCIX.

states to the contrary notwithstanding.' When this clause was introduced, it was not established that inferior continental courts should be appointed for trial of all questions arising on treaties and on the laws of the general government, and it was my wish and hope that every question of that kind would have been determined in the first instance in the courts of the respective states; had this been the case, the propriety and the necessity that treaties duly made and ratified, and the laws of the general government, should be binding on the state judiciaries which were to decide upon them, must be evident to every capacity, while at the same time, if such treaties or laws were inconsistent with our constitution and bill of rights, the judiciaries of this state would be bound to reject the first and abide by the last, since in the form I introduced the clause, notwithstanding treaties and the laws of the general government were intended to be superior to the laws of our state government, where they should be opposed to each other, yet that they were not proposed nor meant to be superior to our constitution and bill of rights. It was afterwards altered and amended (if it can be called an amendment) to the form in which it stands in the system now published, and as inferior continental, and not state courts, are originally to decide on those questions, it is now worse than useless, for being so altered as to render the treaties and laws made under the federal government superior to our constitution, if the system is adopted it will amount to a total and unconditional surrender to that government, by the citizens of this state, of every right and privilege secured to them by our constitution, and an express compact and stipulation with the general government that it may, at its discretion, make laws in direct violation of those rights. But on this subject I shall enlarge in a future number.

That I 'voted an appeal should lay to the supreme judiciary of the United States, for the correction of all errors both in law and fact,' in rendering judgment is most true, and it is equally true that if it had been so ordained by the Constitution, the supreme judiciary would only have had an appellate jurisdiction, of the same nature with that possessed by our high court of appeals, and could not in any respect intermeddle with any fact decided by a jury; but as the clause now stands, an appeal being given in general terms from the inferior courts, both as to law and fact, it not only doth, but is avowedly intended, to give a power very different from what our court of appeals, or any court of appeals in the United States or in England enjoys, a power of the most dangerous and alarming nature, that of setting at nought the verdict of a jury, and having the same facts which they had

determined, without any regard or respect to their determination, examined and ultimately decided by the judges themselves, and that by judges immediately appointed by the government. But the Landholder also says that 'I agreed to the clause that declares nine states to be sufficient to put the government in motion.' I cannot take to myself the merit even of this without too great a sacrifice of truth. It was proposed that if seven states agreed that should be sufficient; by a rule of Convention in filling up blanks, if different numbers were mentioned, the question was always to be taken on the highest. It was my opinion, that to agree upon a ratification of the constitution by any less number than the whole thirteen states, is so directly repugnant to our present articles of confederation, and the mode therein prescribed for their alteration, and such a violation of the compact which the states, in the most solemn manner, have entered into with each other, that those who could advocate a contrary proposition, ought never to be confided in, and entrusted in public life. I availed myself of this rule, and had the question taken on thirteen, which was rejected. Twelve, eleven, ten and nine were proposed in succession; the last was adopted by a majority of the members. I voted successively for each of these members, to prevent a less number being agreed on. Had nine not been adopted, I should on the same principle have voted for eight. But so far was I from giving my approbation that the assent of a less number of states than thirteen should be sufficient to put the government in motion, that I most explicitly expressed my sentiments to the contrary, and always intended, had I been present when the ultimate vote was taken on the constitution, to have given it my decided negative, accompanied with a solemn protest against it, assigning this reason among others for my dissent. Thus, my fellow citizens, that candour with which I have conducted myself through the whole of this business obliges me, however reluctantly, and however 'mortifying it may be to my vanity,' to disavow all 'those greater positive virtues' which the Landholder has so obligingly attributed to me in Convention, and which he was so desirous of conferring upon me as to consider the guilt of misrepresentation and falsehood but a trifling sacrifice for that purpose, and to increase my mortification, you will find I am equally compelled to yield up every pretence even to those of a negative nature, which a regard to justice has, as he says, obliged him not to omit. These consist, as he tells us, in giving my entire approbation to the system as to those parts which are said to endanger a trial by jury, and as to its want of a bill of rights, and in having too much candour there to signify that I thought it deficient in either of these respects.

But how, I pray, can the Landholder be certain that I deserve this encomium? Is it not possible, as I so frequently exhausted the politeness of the Convention, that some of those marks of fatigue and disgust, with which he intimates I was mortified as oft as I attempted to speak, might at that time have taken place, and have been of such a nature as to attract his attention; or, perhaps, as the Convention was prepared to slumber whenever I rose, the Landholder, among others, might have sunk into sleep, and at that very moment might have been feasting his imagination with the completion of his ambitious views, and dreams of future greatness. But supposing I never did declare in Convention that I thought the system defective in those essential points, will it amount to a positive proof that I approved the system in those respects, or that I culpably neglected an indispensable duty? Is it not possible, whatever might have been my insolence and assurance when I first took my seat, and however fond I might be at that time of obtruding my sentiments, that the many rebuffs with which I met, the repeated mortifications I experienced, the marks of fatigue and disgust with which my eyes were sure to be assailed wherever I turned them — one gaping here, another yawning there, a third slumbering in this place, and a fourth snoring in that — might so effectually have put to flight all my original arrogance, that, as we are apt to run into extremes, having at length become convinced of my comparative nothingness, in so august an assembly and one in which the science of government was so perfectly understood, I might sink into such a state of modesty and diffidence as not to be able to muster up resolution enough to break the seal of silence and open my lips even after the rays of light had begun to penetrate my understanding, and in some measure to chase away those clouds of error and ignorance in which it was enveloped on my first arrival? Perhaps had I been treated with a more forbearing indulgence while committing those memorable blunders, for a want of a sufficient knowledge in the science of government, I might, after the rays of light had illuminated my mind, have rendered my country much more important services, and not only assisted in raising some of the pillars, but have furnished the edifice with a new roof of my own construction, rather better calculated for the convenience and security of those who might wish to take shelter beneath it, than that which it at present enjoys. Or even admitting I was not mortified, as I certainly ought to have been, from the Landholder's account of the matter, into a total loss of speech, was it in me, who considered the system, for a variety of reasons, absolutely inconsistent with your political welfare and happiness, a culpable neglect of duty in not endeavouring, and that

against every chance of success, to remove one or two defects, when I had before ineffectually endeavoured to clear it of the others, which therefore, I knew must remain? But to be serious, as to what relates to the appellate jurisdiction in the extent given by the system proposed, I am positive there were objections made to it, and as far as my memory will serve me, I think I was in the number of those who actually objected; but I am sure that the objections met with my approbation. With respect to a bill of rights, had the government been formed upon principles truly federal, as I wished it, legislating over and acting upon the states only in their collective or political capacity, and not on individuals, there would have been no need of a bill of rights, as far as related to the rights of individuals, but only as to the rights of states. But the proposed constitution being intended and empowered to act not only on states, but also immediately on individuals, it renders a recognition and a stipulation in favour of the rights both of states and of men, not only proper, but in my opinion absolutely necessary. I endeavoured to obtain a restraint on the powers of the general government, as to standing armies, but it was rejected. It was my wish that the general government should not have the power of suspending the privilege of the writ of habeas corpus, as it appears to me altogether unnecessary, and that the power given to it may and will be used as a dangerous engine of oppression, but I could not succeed. An honorable member from South Carolina most anxiously sought to have a clause inserted securing the liberty of the Press, and repeatedly brought this subject before the Convention, but could not obtain it. I am almost positive he made the same attempt to have a stipulation in favour of liberty of conscience, but in vain. The more the system advanced the more was I impressed with the necessity of not merely attempting to secure a few rights, but of digesting and forming a complete bill of rights, including those of states and of individuals, which should be assented to, and prefixed to the Constitution, to serve as a barrier between the general government and the respective states and their citizens; because the more the system advanced the more clearly it appeared to me that the framers of it did not consider that either states or men had any rights at all, or that they meant to secure the enjoyment of any to either the one or the other; accordingly, I devoted a part of my time to the actually preparing and draughting such a bill of rights, and had it in readiness before I left the Convention, to have laid it before a committee. I conversed with several members on the subject; they agreed with me on the propriety of the measure, but at the same time expressed their sentiments that it would be impossible to procure its adoption if

attempted. A very few days before I left the Convention, I shewed to an honorable member sitting by me a proposition, which I then had in my hand, couched in the following words; 'Resolved that a committee be appointed to prepare and report a bill of rights, to be prefixed to the proposed Constitution,' and I then would instantly have moved for the appointment of a committee for that purpose, if he would have agreed to second the motion, to do which he hesitated, not as I understand from any objection to the measure, but from a conviction in his own mind that the motion would be in vain.

Thus my fellow citizens, you see that so far from having no objections to the system on this account, while I was at Convention, I not only then thought a bill of rights necessary, but I took some pains to have the subject brought forward, which would have been done, had it not been for the difficulties I have stated. At the same time I declare that when I drew up the motion, and was about to have proposed it to the Convention, I had not the most distant hope it would meet with success. The rejection of the clauses attempted in favour of particular rights, and to check and restrain the dangerous and exorbitant powers of the general government from being abused, had sufficiently taught me what to expect. And from the best judgment I could form while in Convention, I then was, and yet remained, decidedly of the opinion that ambition and interest had so far blinded the understanding of some of the principal framers of the Constitution, that while they were labouring to erect a fabrick by which they themselves might be exalted and benefited, they were rendered insensible to the sacrifice of the freedom and happiness of the states and their citizens, which must, inevitably be the consequence. I most sacredly believe their object is the total abolition and destruction of all state governments, and the erection on their ruins of one great and extensive empire, calculated to aggrandize and elevate its rulers and chief officers far above the common herd of mankind, to enrich them with wealth, and to encircle them with honours and glory, and which according to my judgment on the maturest reflection, must inevitably be attended with the most humiliating and abject slavery of their fellow citizens. by the sweat of whose brows, and by the toil of whose bodies, it can only be effected. And so anxious were its zealous promoters to hasten to a birth this misshapened heterogenous monster of ambition and interest, that, for some time before the Convention rose, upon the least attempt to alter its form, or modify its powers, the most fretful impatience was shown, such as would not have done much honour to a State Assembly, had they been sitting as long a time, and their treasury empty; while it was repeatedly urged on the con-

trary, but urged in vain, that in so momentous an undertaking, in forming a system for such an extensive continent, on which the political happiness of so many millions, even to the latest ages, may depend, no time could be too long — no thoughts and reflections too great — and that if by continuing six months, or even as many years, we could free the system from all its errors and defects, it would be the best use to which we could possibly devote our time. Thus my fellow citizens am I under necessity of resigning again into the hands of the Landholder, all those virtues both of a positive and negative kind, which from an excess of goodness he bestowed upon me, and give him my full permission to dispose of them hereafter in favour of some other person, who may be more deserving, and to whom they will be more acceptable: at the same time, I must frankly acknowledge, however it may operate as a proof of my dullness and stupidity, that the “ignorance in the science of government” under which I laboured at first was not removed by more than two months close application under those august and enlightened masters of the science with which the Convention abounded, nor was I able to discover during that time, either by my own researches, or by any light borrowed from those luminaries, anything in the history of mankind or in the sentiments of those who have favoured the world with their ideas on government, to warrant or countenance the motley mixture of a system proposed: a system which is an innovation in government of the most extraordinary kind; a system neither wholly federal, nor wholly national — but a strange hotch-potch of both — just so much federal in appearance as to give its advocates in some measure, an opportunity of passing it as such upon the unsuspecting multitude, before they had time and opportunity to examine it, and yet so predominantly national as to put it in the power of its movers, whenever the machine shall be set agoing, to strike out every part that has the appearance of being federal, and to render it wholly and entirely a national government: And if the framing and approving the Constitution now offered to our acceptance, is a proof of knowledge in the science of government, I not only admit, but I glory in my ignorance; and if my rising to speak had such a somnific influence on the Convention as the Landholder represents, I have no doubt the time will come, should this system be adopted, when my countrymen will ardently wish I had never left the Convention, but remained there to the last, daily administering to my associates the salutary opiate. Happy, thrice happy, would it have been for my country, if the whole of that time had been devoted to sleep, or been a blank in our lives, rather than employed in forging its chains. As I fully intended to have returned to the Conven-

tion before the completion of its business, my colleagues very probably might, and were certainly well warranted to, give that information the Landholder mentions; but whether the Convention was led to conclude that I ‘would have honoured the Constitution with my signature had not indispensable business called me away,’ may be easily determined after stating a few facts. The Landholder admits I was at first against the system — when the compromise took place on the subject of representation, I in the most explicit manner declared in Convention, that though I had concurred in the report, so far as to consent to proceed upon it that we might see what kind of a system might be formed, yet I disclaimed every idea of being bound to give it my assent, but reserved to myself the full liberty of finally giving it my negative, if it appeared to me inconsistent with the happiness of my country. In a desultory conversation which long after took place in Convention, one morning before our honourable president took the chair, he was observing how unhappy it would be should there be such a diversity of sentiment as to cause any of the members to oppose the system when they returned to their states; on that occasion I replied that I was confident no state in the union would more readily accede to a proper system of government than Maryland, but that the system under consideration was of such a nature, that I never could recommend it for acceptance; that I thought the state never ought to adopt it, and expressed my firm belief that it never would.

An honourable member from Pennsylvania objected against that part of the sixth article which requires an oath to be taken by the persons there mentioned, in support of the constitution, observing (as he justly might from the conduct the convention was then pursuing) how little such oaths were regarded. I immediately joined in the objection, but declared my reason to be, that I thought it such a constitution as no friend of his country ought to bind himself to support. And not more than two days before I left Philadelphia, another honourable member from the same state urged most strenuously that the Convention ought to hasten their deliberations to a conclusion, assigning as a reason that the Assembly of Pennsylvania was just then about to meet, and that it would be of the greatest importance to bring the system before that session of the legislature, in order that a Convention of the State might be immediately called to ratify it, before the enemies of the system should have an opportunity of making the people acquainted with their objections, at the same time declaring that if the matter should be delayed and the people have time to hear the variety of objections which would be made to it by its opposers, he thought it doubtful whether that

state or any other state in the union would adopt it. As soon as the honourable member took his seat, I rose and observed, that I was precisely of the same opinion, that the people of America never would, nor did I think they ought to, adopt the system, if they had time to consider and understand it; whereas a proneness for novelty and change — a conviction that some alteration was necessary, and a confidence in the members who composed the Convention — might possibly procure its adoption, if brought hastily before them, but that these sentiments induced me to wish that a very different line of conduct should be pursued from that recommended by the honourable member. I wished the people to have every opportunity of information, as I thought it much preferable that a bad system should be rejected at first, than hastily adopted and afterwards be unavailingly repented of. If these were instances of my “high approbation,” I gave them in abundance as all the Convention can testify, and continued so to do till I left them. That I expressed great regret at being obliged to leave Philadelphia, and a fixed determination to return if possible before the Convention rose, is certain. That I might declare that I had rather lose an hundred guineas than not to be there at the close of the business is very probable — and it is possible that some who heard me say this, not knowing my reasons, which could not be expressed without a breach of that secrecy to which we were enjoined, might erroneously have concluded that my motive was the gratification of vanity, in having my name enrolled with those of a Franklin and a Washington. As to the first, I cordially join in the tribute of praise so justly paid to the enlightened philosopher and statesman, while the polite, friendly and affectionate treatment myself and family received from that venerable sage and the worthy family in which he is embosomed, will ever endear him to my heart. The name of Washington is far above my praise. I would to Heaven that ‘on this occasion one more wreath had been added to the number of those which are twined around his amiable brow — that those with which it is already surrounded may flourish with immortal verdure, nor wither or fade till time shall be no more, is my fervent prayer, and may that glory which encircles his head ever shine with undiminished rays. To find myself under the necessity of opposing such illustrious characters, whom I venerated and loved, filled me with regret; but viewing the system in the light I then did, and yet do view it, to have hesitated would have been criminal; complaisance would have been guilt. If it was the idea of my state that whatever a Washington or Franklin approved, was to be blindly adopted, she ought to have spared herself the expence of sending any members to the Con-

tion, or to have instructed them implicitly to follow where they led the way. It was not to have my ‘name enrolled with the other labourers,’ that I wished to return to Philadelphia — that sacrifice which I must have made of my principles by putting my name to the Constitution, could not have been effaced by any derivative lustre it could possibly receive from the bright constellation with which it would have been surrounded. My object was in truth the very reverse; as I had uniformly opposed the system in its progress, I wished to have been present at the conclusion, to have then given it my solemn negative, which I certainly should have done, even had I stood single and alone, being perfectly willing to leave it to the cool and impartial investigation both of the present and of future ages to decide who best understood the science of government — who best knew the rights of men and of states, who best consulted the true interest of America, and who most faithfully discharged the trust reposed in them, those who agreed to or those who opposed the new Constitution — and so fully have I made up my own mind on this subject, that as long as the history of mankind shall record the appointment of the late Convention, and the system which has been proposed by them, it is my highest ambition that my name may also be recorded as one who considered the system injurious to my country, and as such opposed it.

CXCIII. LUTHER MARTIN’S LETTER TO THE CITIZENS OF MARYLAND.<sup>1</sup>

Baltimore, March 25, 1788.

Those who would wish you to believe that the faults in the system proposed are wholly or principally owing to the difference of state interests, and proceed from that cause, are either imposed upon themselves, or mean to impose upon you. The principal questions, in which the state interests had any material effect, were those which related to representation, and the number in each branch of the legislature, whose concurrence should be necessary for passing navigation acts, or making commercial regulations. But what state is there in the union whose interest would prompt it to give the general government the extensive and unlimited powers it possesses in the executive, legislative and judicial departments, together with the powers over the militia, and the liberty of establishing a standing army without any restriction? What state in the union considers it advantageous to its interest that the President should be re-eligible

<sup>1</sup> P. L. Ford, *Essays on Constitution*, pp. 374-375; first printed in the *Maryland Journal*, March 28, 1788.

